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CIS

DISBURSAL OF LAC COURTE OREILLES BAND TRUST FUNDS

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1890

TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO DISBURSE CERTAIN TRUST FUNDS OF THE LAC COURTE OREILLES BAND OF LAKE SUPERIOR CHIPPEWA INDIANS OF WISCONSIN

DECEMBER 9, 1981

WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE

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DISBURSAL OF LAC COURTE OREILLES BAND TRUST FUNDS

DECEMBER 9, 1981

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:40 a.m., in room 357, Russell Senate Office Building, Senator John Melcher (acting chairman) presiding.

Present: Senators Melcher and DeConcini.

Staff present: Timothy C. Woodcock, staff director; Jo Jo Hunt, staff attorney; John Mulkey, legislative assistant; and June Tracy, legislative aide.

Senator MELCHER [acting chairman]. The meeting will come to order.

The purpose of this hearing before the Senate Select Committee on Indian Affairs is to receive testimony on S. 1890 from the administration and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin.

S. 1890 authorizes the Secretary of the Interior to disburse certain trust funds of the Lac Courte Oreilles Band. This is an emergency measure to allow the band to pay an indebtedness to the State Bank of Drummond, Drummond, Wis., which resulted because of the problems the band has faced in the recovery of indirect costs associated with the administration of Federal grants and contracts.

This is the first time the Congress has had to consider this type of legislation. Although the official Indian policy of the Federal Government is self-determination, which includes operation by tribes of programs to provide services to their members, it appears from this case that when a tribe actively seeks grants and contracts to operate its own programs, it can result in serious financial consequences for the tribe. Perhaps this unfortunate situation for the Lac Courte Oreilles Band will bring the problems of indirect cost recovery for Indian tribes and organizations to the forefront for both the legislative and executive branches of Government.

Let me say to the tribal witnesses that the proposal offered by the tribe as a solution to this unfortunate situation, which is embodied in S. 1890, is one of the most responsible proposals I have seen in the 10 years I have been involved in the House Interior Committee and here in the Senate in the Indian Affairs Committee dealing with the problems and the consequences of legislation that affects Indian tribes.

I believe this act by the Lac Courte Oreilles is a signal now for the Federal Government to be responsible and prevent other tribes from having to use judgments to pay off indebtedness resulting from the

strange, confusing, and often inappropriate methods imposed on tribes and Indian organizations to recover the cost of administering Federal programs.

I commend you for your honesty and efforts to maintain a good business relationship and reputation for the band.

At this time, without objection, I will place a copy of S. 1890 in the hearing record.

[The bill follows:]

97TH CONGRESS
1ST SESSION

S. 1890

To authorize the Secretary of the Interior to disburse certain trust funds of the Lac Courte Oreilles Band of Lake Superior or Chippewa Indians of Wisconsin, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 24 (legislative day, NOVEMBER 2), 1981

Mr. PROXMIRE introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To authorize the Secretary of the Interior to disburse certain trust funds of the Lac Courte Oreilles Band of Lake Superior or Chippewa Indians of Wisconsin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior shall, at the request of the governing body of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, pay to the State bank of Drummond, Drummond, Wisconsin, not to exceed 20 per centum of the funds of such tribe derived from awards of the

Indian Claims Commission in dockets numbered 18–C and 18–T which are deposited in the United States Treasury to the credit of such tribe in trust accounts numbered 14x9228 and 14x9278. Such payments shall be used for the sole purpose of covering or reducing an overdraft incurred by the tribe in support of administration of Federal contracts on an account maintained by the tribe in such bank which is designated "general fund".

SEC. 2. In the event that the United States acts to adjust the accounts of Indian tribes or organizations administering Federal contracts for the underrecovery of contract support money, the Secretary of the Interior, at his discretion, may reimburse the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, in whole or in part, for this disbursement.

○

Senator MELCHER. Our first witness this morning will be Theodore Krenzke, Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior. Mr. Krenzke?

STATEMENT OF THEODORE KRENZKE, DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C., ACCOMPANIED BY JAY SUAGEE, CHIEF OF THE BUREAU OF INDIAN AFFAIRS, DIVISION OF SELF-DETERMINATION SERVICES

Mr. KRENZKE. Mr. Chairman, I am pleased to present the Department's views on S. 1890. With me is Mr. Jay Suagee, Chief of the Bureau of Indian Affairs, Division of Self-Determination Services.

With your permission I will try to hit the highlights of our brief statement.

We do not object to the enactment of S. 1890, if amended as we suggest.

S. 1890 would authorize the Secretary of the Interior at the request of the Lac Courte Oreilles Band to pay to the State Bank of Drummond, Drummond, Wis., not to exceed 20 percent of the tribal funds derived from Indian claims awards in dockets Nos. 18–C and 18–T. Such payment would be used to cover a bank overdraft which has resulted from problems involving indirect costs which are associated with the administration of Federal contracts and grants.

Until recently the tribe had been operating under an agreement with the bank which permitted the bank to consider all of the tribe's separate accounts as one for overdraft purposes. However, under, a recent FDIC notice this will no longer be possible after January 1, 1982. At that time the tribe's general fund account is expected to be overdrawn by approximately $400,000. The Lac Courte Oreilles Band has had funds from claims award dockets Nos. 18–C and 18–T available since February 1, 1979. However, to date they could not be released because the band has not developed a proposal for their expenditure, and the funds have been held and invested by the Secretary.

We understand the band expects to develop a proposal for the rest of the funds in the future.

Section 2 of S. 1890 authorizes the Secretary to reimburse the tribe for the use of such funds if other tribes are afforded financial relief by the United States for financial difficulties arising under similar circumstances. We do not believe this section is necessary. In the event the United States acts to adjust any accounts of Indian tribes for the purposes stated in section 2, we will at that time include the Lac Courte Oreilles Band.

In addition, our report on S. 1890 includes several technical amendments to the bill.

As a personal note, I might just add that I fully concur with your comment that the suggested approach that the band has come forward with here has been an extremely responsible one, and we have had dialog with the tribe, particularly in the last couple of months, and we are tremendously impressed with the efforts that this current tribal administration is making to grapple with the problem.

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That concludes my statement. I would be pleased to answer any questions you might have.

Senator MELCHER. Thank you very much.

Has there been any assessment done by the BIA to ascertain the number of other tribes or contract schools or Indian organizations which are in serious financial difficulties due to problems of the recovery of indirect costs?

Mr. KRENZKE. We have not had a tribe-by-tribe assessment in relation to that specific situation. However, we recognize that it indeed is a problem for many tribes and tribal organizations. We think it is a particular problem for tribal organizations and for tribes that do not have other sources of income. We have recently entered into a contract with an organization which we think has some particular expertise in giving us some meaningful assistance in dealing with this issue. This is in line with a commitment that we have made, particularly to Congressman Yates of the House Appropriations Committee, to come up with some recommendations on this issue after the first of the year.

Under this contract we will be getting into an overall assessment of specifically how many tribes are impacted by the problem.

Senator MELCHER. Do I understand you correctly that this would be just an assessment? What about dealing with the tribes themselves to demonstrate or acquaint them on how to prepare an indirect cost proposal to avoid these kinds of recovery problems?

Mr. KRENZKE. We have certainly been dealing with tribes around the country in relation to this problem for an extended period of time. I think most tribes are generally aware of the problem, and the chief problem, I think, is one that we refer to as a theoretical overrecovery/underrecovery problem. Part of that is something that cannot be avoided, even with the best advanced knowledge of the situation, in that in relation to some Federal programs that are available to tribes, by statute the amount of the indirect cost is limited, and certain agencies have simply never been able to pay their full share of these indirect costs. Probably most notable in relation to that has been the CETA program.

Senator MELCHER. I understand that in BIA the tribal contractors will usually get the full, indirect cost rate, but in other agencies of the Federal Government they refuse to pay the full rate, and that is where the problem comes. You referred to CETA, but are there others?

Mr. KRENZKE. I believe there are some other Federal agencies that have been limited by statute, and in some instances they have been limited also by the availability of funds. Now, in relation to the BIA, in all candor we have been able to meet the overwhelming majority of the indirect costs, and I might refer specifically to fiscal years 1980 and 1981 where the amount of the appropriations were about 95 percent of the tribal need. In general, we were able in most instances to use other program funds in order to cover most of the remaining gap that existed. I do not think there are too many, but there are probably a few instances affecting some of the tribes where the BIA has not fully met its share of the indirect costs. But generally it is true that the BIA has met the cost, and the problem has been with other Federal agencies.

Senator MELCHER. Is there a problem with HUD?

Mr. KRENZKE. I am not aware specifically of any problem with HUD.

Senator MELCHER. We are going to have an oversight hearing for two of the areas: Billings on the 21st of this month on Indian housing, and this is one of the things we would like to pursue, because we notice there is a growing amount of delinquencies.

Mr. KRENZKE. That is indeed a problem, but I think it is somewhat different from this problem.

Senator MELCHER. It may not be intermingled. The delinquencies may just be a failure on the individual's part, rather than an indirect cost for the tribe.

Mr. KRENZKE. Right. And it is a different type of structure there that deals with the housing authorities rather than with the tribes themselves.

Senator MELCHER. Earlier this year, our committee staff met with contract school representatives and tribal representatives and BIA officials and Arnold Baron of the Interior Inspector General's Office regarding indirect cost problems.

What has happened since that meeting toward working out administrative solutions for these problems?

Mr. KRENZKE. Well, one of the things we have come up with is a lump-sum indirect cost payment for contract schools, and that is now in effect. We think that this has tended to alleviate a great deal of that problem for these schools, mostly on the Navajo Reservation, that were impacted by it.

We do have a proposal which we think may help the situation. A final decision has not been made on it, but if it is made, it will be put in effect for fiscal year 1983. That would take care of the indirect costs by funding them directly through Bureau problems, rather than in a contract support account. The Assistant Secretary has not made a final decision on that for 1983 yet, but we believe that that will probably happen.

The most difficult problem that we are still wrestling with is this theoretical overrecovery/underrecovery problem. In our recent letter to Congressman Yates, to which I referred—I believe this committee has a copy of it. If not, we would be pleased to furnish a copy of it—we have detailed some options that we saw. The proposed options all have a lot of problems, particularly for us, because the problem goes beyond the Bureau of Indian Affairs and the Department of the Interior. Admittedly, we are not where we would like to be on that, but the commitment has been made by the Assistant Secretary to offer up some solutions to it after the first of the year.

Senator MELCHER. We would like to have a copy of that letter.

Mr. KRENZKE. I have one here. I can give it to you.

Senator MELCHER. Will the Lac Courte Oreilles then find itself in a similar situation in a few years from now if the current method for recovery of indirect costs is maintained?

Mr. KRENZKE. We do not believe they should, and certainly not to the extent that the situation exists at the present time. However, I would be the first to say that we really need to find a better solution than that which exists at the present time for this overrecovery/underrecovery problem.

Senator MELCHER. We will be glad to work with you on that, if you can give us some suggestions as to how we can be helpful, because we would like to avoid this situation in the future.

Mr. KRENZKE. We appreciate that offer of assistance, and I am sure we will be talking with you about it.

Senator MELCHER. Thank you very much.

Without objection, the material will be placed in the record at this point.

[The prepared statement of Mr. Krenzke; the aforementioned letter to Congressman Sidney R. Yates; and "Briefing Document Outline: Accumulated Cash—Shortfall of the Lac Courte Oreilles Tribal Government for Fiscal Years Ending September 30, 1981" follow. Testimony resumes on p. 58.]

PREPARED STATEMENT OF THEODORE C. KRENZKE, DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to present the Department's views on S. 1890, a bill "to authorize the Secretary of the Interior to disburse certain trust lands of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and for other purposes."

We do not object to the enactment of S. 1890, if amended as we suggest.

S. 1890 would authorize the Secretary of the Interior, at the request of the Lac Courte Oreilles Band, to pay to the State Bank of Drummond, Drummond, Wis., not to exceed 20 percent of the tribal funds derived from Indian claims awards in Docket Nos. 18–C and 18–T, which are held in the U.S. Treasury. Such payments would be used solely for covering a bank overdraft incurred by the tribe as a result of administering Federal contracts.

Until recently, the tribe has been operating under an agreement with the State Bank of Drummond that permits the bank to consider all of the tribe's separate accounts together for overdraft purposes. However, the Federal Deposit Insurance Corporation notified all of its member banks on July 8 of this year, that such agreements are in violation of the law and that, as of January 1, 1982, member banks must treat each account of multi-account clients separately. Thus, at that time, the tribe's "general fund" account will be overdrawn in an amount of approximately $400,000. This overdrawal results from the indirect costs of administering Federal grants and contracts and the tribe's liability to the United States that arises when the tribe has recovered more indirect costs under the negotiated rate for a contract than were actually incurred.

Under the Act of October 19, 1973, a plan for the disposition of judgment funds became effective on February 1, 1979. The judgment funds in Dockets 18–C and 18–T were apportioned among 14 federally acknowledged tribal entitities, including the Lac Courte Oreilles Band.

At the time of the submission of the proposed plan to Congress, the Lac Courte Oreilles Band had taken no action to develop a tribal proposal for its share of the funds. Therefore, the plan provided that the Band's share of funds be held and invested by the Secretary under 25 USC 162A until the Band prepared a proposal for the use and distribution of the funds in accordance with the 1973 act. To date, the band has taken no action on its proposal; however, the band plans to address this matter in the future.

Section 2 of S. 1890 authorizes the Secretary to reimburse the tribe for the use of such funds if other tribes are afforded relief by the United States from financial difficulties arising under similar circumstances. We do not believe that this section is necessary. In the event that the United States acts to adjust any accounts of Indian tribes for the purposes stated in section 2, we will, at that time, specifically include the Lac Courte Oreilles Band.

In addition, our report on S. 1890 includes several technical amendments to the bill.

This concludes my prepared statement. I would be pleased to answer any questions you and members of the committee may have.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 22 1981

Honorable Sidney R. Yates
Chairman, Subcommittee on
Interior Appropriations
House of Representatives
Washington, D. C. 20515

Dear Mr. Yates:

This is submitted as an interim report in response to the request of your Committee in House Report No. 97-163, on page 39, concerning indirect cost rates for tribal contractors, including tribally-run schools. In dealing with indirect costs for tribal contractors, the Bureau of Indian Affairs has been faced with three major issues. We shall report on each of these issues in turn.

Some of the information contained here has been previously recorded in a report to the Chairman, Subcommittee on Interior and Related Agencies Appropriations, United States Senate, dated March 19, 1981.

Shortfall in Indian Contract Support Funds

When tribal organizations contract for the operation of Bureau programs, additional costs may result since they must establish or expand an administrative structure in order to operate the contracted program(s). Currently, the Bureau provides separate Contract Support Funds, to the extent appropriated, to cover the additional costs of contracting Bureau programs. These funds are made available in addition to the direct program funds that finance the costs of direct program operations under the contract. These Contract Support Funds are provided to prevent program deterioration, not for program enhancement The amount of the budget request is based upon an estimate of the volume of tribal contracting and an average tribal indirect cost rate. During each of the past two fiscal years, our budget request has been exceeded by the amount requested by tribal contractors. In FY 1980, we experienced a shortfall of approximately $1.3 million, and in FY 1981 the shortfall amounted to approximately $1.5 million.

These shortfalls have resulted primarily from two main factors. One is the lack of precision in the budget estimating process--since budget preparation begins two or three years in advance of the period within which tribes actually consummate P.L. 93-638 contracts. Thus, it may not be unusual to receive tribal notice to contract a Bureau program in

timeframes not synchronized to the Bureau budget during a fiscal year. When this mismatch occurs, sufficient planning may not have taken place to schedule for the contingency of additional contract support funds. Consequently, a precise match of actual tribal contractors' requests and the budget estimate is most difficult. For example, the Bureau budget request for FY 1981 of $25,870,000 was projected to meet a tribal contracting volume of $195 million to $200 million. In reality, dollar volume of tribal contracts currently is reported as approximately $210 million for FY 1981. Thus, our projection of contract volume was on the low side by some 10 to 15 million dollars.

Another critical factor affecting the accuracy of our projected need is the validity of the average indirect cost rate used in developing the budget request. Thus, our FY 1981 budget request projects an average tribal contract or indirect cost rate of 13 percent. The actual average (mean) rate is slightly higher at approximately 13.2 percent. Also, the median rate is 14.8 percent, and tribes in two areas where tribal contracting is highest in dollar volume have average rates of 20+ percent and 17+ percent. Thus, upward variations in indirect tribal cost rates also have impacted upon the adequacy of our budget justification for contract support funds, although the average tribal rate is well below that of other non-profit organizations.

These two factors, (1) difficulties in predicting volume of tribal contracts and (2) similar problems in forecasting average indirect cost rates have affected the accuracy of the Bureau's budget request for Contract Support Funds, and are likely to affect future requests. While Bureau projections of tribal need have been reasonably close, they have been on the short side and thus have had some impact on tribal contracting operations.

Available Contract Support Funds for FY 1981 were allocated to Areas on a basis proportionate to stated need and Area Directors were directed to allocate funds to tribal contractors on a fair and equitable basis. However, during the year a variation from projected tribal contractor needs occurred in certain Areas. The Central Office, through monitoring of actual operations, was able to identify Contract Support Fund surplus to the needs of the Indian Action Team program as well as in certain Areas. These funds were reallocated to those Areas with the most critical needs. As a consequence, tribal contractors in most Areas were funded at a level close to their stated needs.

With respect to FY 1982 operations, in view of the anticipated reduction in the general level of program funding, we believe our budget request for Contract Support Funds is reasonable.

However, the Bureau intends to consider the implementation of a different approach in FY 1983 for projecting tribal contractor needs for Contract Support Funds.

The Bureau will consider reformulation of the budget line item for funding contract support to incorporate these funds into program components.

Under this procedure, the tribes would be aware, throughout the Bureau/tribal budget development and appropriation process, of indirect cost fund availability by program. However, the Bureau anticipates that it would need a "contract support contingency fund" to cover the required needs of new P.L. 93-638 contracts, reductions-in-force, relocation of Bureau employees adversely affected, and certain audit expenses. If this approach is used, this "separate fund" will be appropriately identified in the FY 1983 budget.

Indirect Cost Rate/Lump Sum Agreements for Contractor Schools

The Public Law 95-561, Education Amendments of 1978, mandated the use of formula funding for program costs of all Bureau schools. Subsequently, the Office of Indian Education Programs (OIEP) developed a formula which assigns weighted factors that are convertible to dollars relative to grade levels, educational needs, residential programs, et cetera. Based on education and related variables that are incorporated into the formula to address all possible costs, each school then operates under a funding level that is equitable with regard to a comparable facility in the Bureau system. This same formula is also used to identify school program costs for contract schools. To complement this formula, the Office of Indian Education Programs prepared draft guidelines, issued in February 1981, which were intended to aid in identifying such other costs, not covered by the formula, which contract schools would incur. These guidelines were issued on an interim basis to apply to FY 1981 operations. To provide for the procedure by which to recover these allowable non-program costs, the contract school may negotiate an indirect cost rate with the Office of the Inspector General, Department of the Interior, or negotiate a lump sum agreement with the appropriate Contracting Officer of the Bureau of Indian Affairs. The interim lump sum agreement guidelines issued in February 1981 were sharply criticized by some contract schools, particularly those in the Navajo Area. A series of discussions subsequently were held with representatives of the contract schools. The guidelines were revised several times. These revised guidelines, which incorporate many, if not all, of the comments offered by the contract schools, were reissued on September 25, 1981, to be effective for FY 1982 operations.

While further comments from the contract schools will be entertained, the initial reaction from contract schools is that these guidelines provide an acceptable basis for Bureau contract school negotiations. Some of the contract schools have suggested that it would be desirable to develop a formula for determining the allowable non-program costs similar to that for determining program costs. The Office of Indian Education Programs, together with other Bureau staff, will consider such a possibility.

Over-recovery/Under-recovery of Indirect Costs

There is a third major factor related to indirect costs which has arisen with some tribal contractors. This has to do with the procedures by which an indirect cost rate is established for tribes; the variation in the procedure or level at which various Federal agencies reimburse tribal

contractors for indirect costs; and the impact upon tribal contractors when they recover more, or less, than their actual indirect costs rate would provide.

In Bureau/tribal contractor operations, the tribal contractor usually negotiates an indirect cost rate with the Office of Inspector General, Department of the Interior. In general, this same rate is then accepted by other Federal agencies, although not in all cases. While the negotiated indirect cost rate establishes a limit against which the tribal contractor may incur costs, the actual amount which the contractor will be allowed is determined by a past performance audit of actual reasonable and allowable costs. Thus, if the tribal contractor negotiates an unrealistically initial high rate, it may be paid for costs which it actually does not incur, and for which it subsequently must make adjustments or actually reimburse the government. It is not unusual for the tribal organization to operate concurrently several contracts during a fiscal year that have been awarded by separate Federal agencies. Under P.L. 93-638 contracts awarded by the Bureau, the tribal contractor is reimbursed for its indirect costs in accord with the indirect cost rate which the tribe has negotiated with OIG. In all such cases, subject to availability of funds, the Bureau then honors 100 percent of the negotiated rate. Other Federal agencies have varying procedures for determining and awarding indirect costs under their respective contracts. Some awards are based on audited rates; others may be mandated by legislative or agency requirements, i.e., a fixed percentage of the contract amount can be used for administrative cost purposes. This may not cover the full amount of the indirect costs which the tribal contractor incurs.

Under current standards, the OIG auditors must assume that the various contracting offices always pay in full their negotiated indirect cost rate to the tribal organization. In fact, this full payment may not occur and the tribe is left with a loss that must be met in some fashion. Thus, the tribe's "actual recovery" (the lesser amount) is at odds with the "theoretical recovery" (the greater amount), to the detriment of the tribe.

In such a situation, then, the tribal contractor is faced with the problem of a proper adjustment--generally, one in which it has a substantial reimbursement to make to the government. The Bureau is strictly limited in what it can do in such a situation--legislation and pertinent regulations prohibit the Bureau of reimbursing the tribe for funds due from another Federal agency. Likewise, the Bureau is inhibited from using funds appropriated in one fiscal year to pay for obligations incurred in a prior fiscal year. Neither does the Bureau have authority or funding to make direct loans to tribal contractors to cover such a situation. In view of this general situation, the Bureau has considered several courses of action, as was noted in our previous report on this matter to the Chairman of the Senate Subcommittee on the Interior and Related Agencies. These are:

(a) Tribal contractors accepting other than Bureau contracts should be held responsible for deficits incurred by the "theoretical over-

recovery." In essence, this deficit would be viewed as the cost of doing business with the government.

(b) Seek exemptions for tribal organizations holding P.L. 93-638 contracts from the fixed percentage approach to paying indirect costs used by some agencies. Where the percentage is dictated by legislation it may be necessary to request legislative relief. In essence, the P.L. 93-638 intent would be expanded to the entire Federal System.

(c) Request legislative authority--with a corresponding budget increase-to allow the Bureau to compensate tribal organizations under P.L. 93-638 for deficits incurred under other contracts to compensate for the "theoretical over-recovery." A retroactive provision for prior deficits would be considered.

(d) Seek exemption for tribal organizations from the guidelines that cause the theoretical over-recovery problem.

Requesting legislative authority--with a corresponding budget increase--to allow the Bureau to compensate tribal organizations under P.L. 93-638 for deficits incurred under other contracts to compensate for the "theoretical over-recovery" has been suggested as a temporary measure, with retroactive provision for prior deficits. However, current budget constraints have precluded such an initiative to date. An exemption from the guidelines that cause the theoretical over-recovery problem has appeared to some to offer a better solution. The OIG's office has, however, discussed the matter with OMB and they felt that the primary cause of the problem was the failure on the part of some Federal agencies to pay their full share. They have not felt there is anything wrong concerning the cost concepts contained in the guidelines.

Another alternative we have considered has been a tribe-by-tribe relief bill, realizing that because it would be too time-consuming this would not be, in all probability, an acceptable alternative. There has also been recent discussion about an approach which would allow the Bureau to work out a procedure with a given tribe whereby it could use an agreed upon portion of a current years funding to repay, on a scheduled basis, its obligation to the Federal Government and thereby work out its past over-recovery/under-recovery liabilities. Under this approach, flexibility would be available particularly to tribes and tribal organizations having only limited resources of their own, to allow them a means of remaining operable and providing services to their members, while their liability to the government is addressed. At present this appears to have more viability than the other possibilities, and we are now assessing precisely what changes would be required in current laws and/or regulations, if any.

Quite candidly, we have not made as much progress in resolving this issue as we would like. This has been in part the result of our becoming aware of other difficulties certain tribes have incurred in the financial accountability and management area. Thus, we are concerned that a number

of tribes may also be in a serious situation, with possible reimbursement due to the government, for reasons other then the over-recovery/under recovery situation. Additionally, we have found the matter to be extremely complex with most proposed solutions seemingly calling for both legislative changes and additional appropriations, neither of which are desired if they can be avoided. A further complicating factor is that much of the genesis of the problem is outside the sphere of operation of this Bureau, and solutions also cannot in all probability be implemented solely by this agency.

In summary, we are diligently addressing what everyone concerned recognizes to be a most serious problem for many tribes and tribal organizations. We believe good progress has been made in designing a means of addressing two of the major items of concern, namely, the shortfall in contract support funding and the special indirect cost problems encountered by the contract schools. With respect to the third issue the over-recovery/under-recovery matter - we still have considerable work to do. In addressing it, it is essential that we not only help tribes which are in fiscal jeopardy because of this issue to find a way to meet their liabilities, but also assure the elimination of the problem in the future. In order to come up with a specific plan of action relative to it, I have directed the Bureau to substantially increase the resources used to address the issue with final recommendations to me by mid-January 1982.

I sincerely appreciate your interest in this problem area, and wish to assure you that I will continue to give the matter the highest priority. If you or your staff have either any questions or suggestions, we will be pleased to receive them and respond to the best of our ability.

Sincerely,

Deputy Assistant Secretary - Indian Affairs

Briefing Document Outline: Accummulated Cash - Shortfall of The

LAC COURTE OREILLES TRIBAL GOVERNMENT

For Fiscal Years Ending 9/30/81

LAC COURTE OREILLES

TRIBAL GOVERNMENT

Discussion Outline

A. Key facts regarding the Lac Courte Oreilles Tribe
   1. Brief history of the tribe — Exhibit I
   2. Organization Chart — Exhibit II

B. Tribal enterprise activities - Summary
   1. Description of tribal enterprises — Exhibit III
   2. Fiscal 1981 statement of revenue and expenditures for tribal enterprises — Exhibit IV

C. Current financial statements as of Sept. 30, 1981
   1. Tribal general fund liabilities as of 9/30/81 — Exhibit V
   2. Tribal balance sheet as of 9/30/81 — Exhibit VI
   3. Summary of fiscal 1981-2grant activity — Exhibit VII

D. Current tribal indirect cost status
   1. Example of indirect cost as applied to tribes — Exhibit VIII
   2. History of shortfalls in indirect cost funding — Exhibit IX
   3. Reduction in indirect expenditures — Exhibit X

E. Change in banking practice affecting the tribe as of January 1, 1982
   1. Letter from F.D.I.C. — Exhibit XI

F. Alternate ways of handling current cash situation
   1. Borrowing
      a. Short term loan
      b. long term loan
   2. Reduction of the LCO indirect cost budget
   3. Challenge F.D.I.C. - possible litegation
   4. Cash-flow impact of alternatives

G. Approaches to handling the long-term cash situation(s)
   1. Less dependency on indirect cost funding
   2. Economic development producing more net income
   3. Tribal assets sold to others/used more effectively
   4. Use of tribal endowments/settlements — Exhibit XII
   5. Use of tribal regulations/taxation to generate revenue
   6. Adequate governmental funding for program administrative costs

H. Summary and recommendations
   1. Probable impact of not solving this problem — Exhibit XIII
   2. Governmental remedies
      a. Forgiveness for overrecovery on indirect monies
      b. Repayment for shortfall of indirect monies
      c. Fully fund indirect cost for fiscal "81 (retroactive)
      d. Fully fund indirect cost for fiscal "82 — Exhibit XIV
   3. Interim assistance provided by a working capital loan — Exhibit XV
   4. Suggested revision to the indirect cost reimbursement funding approach — Exhibit XVI
   5. Tribal Resolution

Exhibit I.1

LAC COURTE OREILLES
TRIBAL GOVERNMENT

BRIEF HISTORY OF THE TRIBE

A prominent component of the Lake Superior Chippewa Tribe, the Lac Courte Oreilles Band is a signatory to the 1837, 1842 and 1854 Treaties with the United States Government. The latter treaty designated three townships (108 square miles) to be set aside as the Lac Courte Oreilles' "Reserve Tract". By 1873 the Reservation boundaries has been established by the President of the United States and the "allottment" process of parceling out 80 acres to each Tribal Member (full-bloods) began. By 1900 and continuing into the 1950's, Tribal Members were permitted, and often encouraged, to either sell their land or have it put into non-trust status, which usually resulted in the land being permenently out of Tribal or Tribal Member Ownership. This resulted in the all too frequent "checker-board" pattern of land ownership within the Lac Courte Oreilles Reservation as has happened on most other Reservations.

Shortly after 1934 most American Indian Tribes reorganized themselves pursuant to the Indian Reorganization Act of that year. Lac Courte Oreilles had a "Business Committee" of its members handling the few minor administrative matters of the Tribe, but it did not have a constitution, as such.

The major accomplishment of the Business Committee of that era, 40's and 50's, was the construction of a Cranberry Marsh in 1949. Other than that project, most "Tribal" functions were cultural and social in nature, with legal, jurisdictional and governmental services handled through the Bureau of Indian Affairs. Most of the funding of the Cranberry Marsh, for example, came through the BIA.

By the mid 60's, however, the seeds of change were being sown and cultivated, primarily by Tribal Members returning home to live the "better life". With them they brought new, independent ideas and the experience and motivation to follow-through with the recently-coined phrases of self-determination, self-sufficiency and self-government. With them they also

brought their analytical eyes which saw critucal needs of the Tribe for better housing, education, health, and employment opportunities - all needs best met by the Tribe, for the Tribe, rather than being imposed upon the Tribe without regard for Tribal history, culture and goals.

The first step was the adoption of a Tribal Constitution (and By-Laws) in November, 1966. Therewith, the Tribal Governing Board was formed and a Tribal Housing Authority was established the following year. A Housing Project was initiated and by 1973 the first, of many units to come (over the next decade), was complete.

Simultaneously, with the advent of HUD Housing, the Tribe formed a construction company. This was to evolve into a viable enterprise, but such took years of training, experience and re-organization first.

Thereupon, Tribal Government Development progressed, almost at a break-neck pace. The Tribal Governing Board began contracting with the BIA and other agencies. Grant applications were initiated for a number of programs and projects. Tribal jurisdiction was asserted. Over-all Economic Development Planning was started. Control over Tribal resources was begun. Educational needs of the Tribe were studied and addressed. Health programs were obtained for the Tribe.

Tangible results of the foregoing can be reported as facts. We are proud of our accomplishments to date and in the offing.

In 1975 plans were carefully made and funding secured to operate a Tribal School System, perticularly to advance the level of achievement of Tribal students, to combat truancy and adjustment problems, to provide a genuine cultural component and atmosphere and to meet the special education needs of Indian students. A commercial building in our New Post community was remodeled and added on to during 1975-1976 and has become our elementary school. In 1978 a now high school building was constructed with E.D.A.

funds ($800,000) and dedicated that summer. Head Start programming began as a summer project in 1968, became full-fledged in 1970 and since 1977, has been an ever-expanding educational program in our new Tribal Office Building (completed in Jan., 1977 with HUD C.D.B.G. funding). Day Care, as a complete educational component, was realized in 1980, having been initiated in 1977. The latest in technical advances are used in innovative ways in all levels of the school curriculum. A low teacher-student ratio results in personal attention and subsequent growth and achievement. Special education counselors and teachers assist each student and their families. A college is in the plans to take off from our present higher education and vocational education efforts.

Health and Social Service programs have always been and continue to be developed as high priority services. Within the new Tribal Office Building is a medical and dental out-patient clinic facility. Funding from BIA and IHS has assisted in the development of a Health Department to meet community health as well as health education needs. Alcohol and drug abuse programs are being addressed at every level - home, school and at work.

Reverence for and protective management of our wildlife led to the establishment of our Tribal Conservation Department in 1975. A conservation code, and Tribal Court code, was correspondingly enacted. Our highly qualified, will-trained, experienced Conservation Department is ready for routine as well as new and extended duty.

In 1976, legislation was passed in Congress returning over 13,000 acres of F.S.A. lands within and adjoining the Reservation to the Tribe. This increased our Tri[illegible]and base significantly so that our Reservation ownership "c[illegible]-board" pattern is as follows today:

EXHIBIT I.4

17,310	Acres of Tribal Lands - In Trust For the Tribe
26,185	Acres of Allotted lands - In Trust For Lac Courte Oreilles Individuals
26,220	Acres of Non-Indian Owned Land
6,144	Acres of Waters, Marsh, etc.
75,859	Acres Within Reservation

A substantial number of acres within the Reservation, approximately 3000, was acquired for the Chippewa Flowage Power Commission Project No. 108 prior to 1921. We are seeking the return thereof through administrative, legal and legislative means. Said project represents a major set-back for the Tribe which has yet to return any benefits to our Members. Damages to the Tribe associated with said project have yet to be litigated.

The population trend of Tribal Members began in the 60's has continued unabated to the present. In 1970 there were less than 700. Today there are almost 1800 Tribal Members residing on or near the Reservation; there are over 2500 Members living within a 100 mile radius of the Reservation. This in turn has resulted in a tremendous need for housing. Currently we have the following HUD Project(s) units:

	HUD	54-1	29 Units (Including 4 units for elderly)
	"	54-2	55 Units
	"	54-3	15 Units (Including 15 for elderly)
	"	54-4	55 Units (Including 7 for elderly)
	"	54-5	55 Units (Including 8 for elderly)
Approved	"	54-6	25 Units (Not yet Under Construction)
Under Construction	"	54-7	41 Units (Including 8 Units for elderly)
By 12/31/83			257 Units will be Under Management of the L.C.O. Housing Authority

Although this looks impressive and we are proud of our new housing, we still have many applicants who have real needs for adequate housing. Unfortunately, economic governmental forecasts show nothing on the horizon in the way of future HUD projects. As an adjunct over the past 10-12 years over 250 older homes have been partially re-modeled and weatherized by BIA and other funds.

Exhibit I.5

Employment figures of the Tribe show a seasonal high, October, 1981, of about 350. This is not reflective of the over 50% unemployment rate on the Reservation, as compared to the county figures of about 12%. Economic opportunies are being constantly explored. While we have an eye out for the large company to put in a good-size, economically sound plant, our approach has narrowed down to forming Tribal enterprises to provide jobs, goods and services and ultimately revenues to help sustain Tribal Government. That, however, is "down the road aways."

Lac Courte Oreilles participates on the regional level as a member of the Great Lakes Inter-Tribal Council, the Inter-State Indian Assembly; Nationally we are members of National Tribal Chairmens Association and the National Congress of American Indians. Our leaders have spoken in Congress, have addressed the public frequently through the media and are conversant with legislators and governmental people at all levels. Our educators have national prominence and our construction company was recently given special commendation by HUD.

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Exhibit II

LAC COURTE OREILLES TRIBAL MEMBERS

TRIBAL GOVERNING BOARD

Special Appointments

- Court Judge
- Election Officials
- Honor the Earth Foundation
- Human Services Committee
- Special Events
  - Cultural
  - Historical

Special Boards Committee

- Elderly Commission
- Health Board
- Housing Authority
- Membership Committee
- Personnel Committee
- Private Industry Council
- Public Broadcasting Corp.

Central Administration

- Accounting Dept.
- Clerical/Secretarial Staff
- Contract Officers
- Custodial Staff
- Enrollment Dept.
- Legal Dept.
- Personnel Dept.
- Planning Dept.
- Public Relations

Contract/Grant Funded Programs

- Conservation Dept.
  - Fire Control
  - Law Enforcement
  - Safety
  - Security
- Court
- Education Dept.
  - PreSchool/Early Ed.
  - Elementary School
  - High School
  - Adult Education
  - Higher Education
  - Vocation Ed.
  - Alternate Ed.
  - Teacher Training
  - Special Ed.
- Health Dept.
  - Medical Clinic
  - Dental Clinic
  - Community Health
  - Alcohol/Drug Abuse
  - WIC/MCH
- Housing Improvement/ Weatherization/Water and Sewer
- Recreation Programs
- Social Services
  - Elderly Programs
  - Youth Programs
  - Food Services
  - Child Welfare
  - ENIP
  - Elderly and Handicapped Transportation Program

Enterprises-Corporation Boards

- Commercial Center
  - Supermarket
  - Variety Store
  - Service Station
- Cranberry Marsh
- Development Corp.
  - Construction
  - Gen. Contracting
- Forest Products
  - Harvesting
  - Hauling
- Games
  - Bingo
  - Roller Skating
- Graphic Arts
  - Printing
  - Duplicating
  - Layout/Design
- PROPOSED
  - Fish Hatchery
  - Historical Village
  - Sand/Gravel/Concrete Co.
  - Wild Rice Production

LAC COURTE OREILLES

EXHIBIT III,1

TRIBAL ENTERPRISE ACTIVITIES DESCRIBED

1. Commercial Center

Little more than a dream for 10 years, the Tribe wanted a convenient, reasonably priced, nice place for its members and surrounding public to shop for groceries and basics. Planning evolved through various phases with a feasibility study verifying we were on the right track with a "mini-mall" concept at the right cross-roads within the Reservation. Because of the vagaries of funding, development in stages has occurred with Phase I complete and Phase II under construction. Phase I consists of a 16,684 square foot one-story commercial building housing a complete grocery store (LCO Fairway), LOC Variety store, and two rental stores -a restaurant and a folk arts shop. Phase II will be a 6,000 square foot building for a full service station and our Conservation Department. The Grocery and Variety stores have been operating for 12 weeks, with total gross sales for the period $50,000 over projections. Financing was as follows:

EDA Grant	$ 15,000.00
HUD CDBG	315,000.00
BIA Loan	500,000.00
Revenue Sharing	20,000.00
TOTAL	$1,350,000.00

Builders and general contractor: Lac Courte Oreilles Development Corporation.

Two more phases are being planned, including a post office, credit union, service business and more stores. The entity responsibility for this enterprise activity is the Lac Courte Oreilles Commercial Center, Inc., a corporation formed by the Tribal Governing Board which issued its Articles of Incorporation on November 12, 1979.

2. Cranberry Production

Our first and oldest Tribal enterprise, the Cranberry Marsh located adjacent to the Chippewa Flowage in our Chief Lake community, was started from scratch in 1949 and enjoyed continuous, but modest, success until the mid 70's. Several lacks - modern equipment, new methods, proper management and adequate financing - contributed to crop failures and no harvesting in 1977 and 1978.

2. Cranberry Production (cont.)

Although a fair sized marsh, the production capabilites had not been nearly realized. In 1978 the Tribal Governing Board obtained funding and management assistance from the regional community development Corporation, Impact-Seven. A separate corporation was formed, an experienced manager was hired and sufficient capital was made available - up to $100,000. An unexpected successful harvest in 1979 grossed $99,678.53 in revenue from sales and 1980 followed with $73,155.45. 1981 harvest projections exceed $100,000*. After the 1982 harvest the marsh (and corporation) will be transferred to the Tribe accompanied by the new marsh manager, a tribal member, and profits from the four years' harvests.

* With the total of capital improvements and operating/administrative expenses projected at $65,000 for 1981, a pre-tax profit of $35,000 could be realized. Currently the entity responsible is a Wisconsin For-Profit Corporation with a five (5) man board of Directors - 3 from Impact-Seven, 2 from Lac Courte Oreilles. Upon return to the Tribe, a Tribal Corporation will be formed to take over responsibility. The present corporation name is:
LCO Cranberry Producers, Inc.

3. Construction Company

We feel we are justifiably proud of our general contracting and construction firm: The Lac Courte Oreilles Development Corporation, a Tribal Corporation as of March 10, 1980, being a Wisconsin not-for-profit corporation prior thereto. Originally managed by a 5 - man Board of Directors, it was recently expanded to 7, all tribal members. Initially formed in 1972, the corporation functioned as a sub-contractor under a non-Indian general contractor until 1976, primarily to gain experience and train members. BY general contracting and fully functioning as a complete builder, LCO Development has satisfactorily completed the following projects:

3. Construction Company (cont.)

1977	Tribal Office Building	$ 500,000
1978	LCO High School Building	808,000
1980	HUD 54-4, 55 housing units	2,363,462
1981	Commercial Center - Phase I	715,000

The following are under construction at this time:

HUD 54-7, 41 housing units	$2,794,077
Commercial Center - Phase II	200,000
Recreational Center Building	138,500
Graphic Arts Building	50,000

Funding is reserved but to be under contract within 90 days for HUD 54-6, 25 units, $1,850,000

Profitability is just now beginning to be realized, primarily due to strong independant management, assembly-line type construction methods where possible, reasonable wage rates and extremely careful financial management, including very low debt ratio. LCO Development is fully bonded, insured and enjoys an extremely high workmanship evaluation from HUD and EDA, as well as Fm Ha.

4. Forest Products

Facilitated through a Department of Labor training grant in FY 1978, "Logging" operations by the Tribe under the auspices of the Tribal Governing Board have been subject to the vicissitudes of the wood-buying market. Interest rates, housing starts and weather combine to create the traditional "Feast or Famine" climate to which loggers are subject. We are no exception. Besides being physically dangerous and demanding, harvesting and hauling trees requires close co-ordiation with various authorities and businessmen; good equipment in excellant repair is a must.

In short, we must report out Forest Products enterprise, Lac Courte Oreilles Forest Products Co.poration, formed as a Tribal corporation in November 12, 1979, is not operating up to expectations. We have not yet found the right combination of employees,

EXHIBIT III,4

(4. Con't)
management and financial support to be able to turn a substantial profit at this time. For FY ending 9/30/81 although gross sales receipts are $88,495, a loss of $279 is reported; also known is that monthly payments on notes payable are in arrears and repossession is being threatened.

While the Tribe does not have a generous abundance of timber, there appears to be a realistic expectation that once the log buying market strengthens under consistent management our Forest Products enterprise can turn a modest profit. We will also be seeking technical assistance from the BIA to provide an analysis of our total situation and to provide a forecast of operating expectations.

5. Games

Bingo and similar games are popular with Indian people - LCO is no exception. Since February, 1979, the Tribal Governing Board has conducted bingo games for its members and the public. Proceeds are used for charitable, educational, cultural/social and other philanthropic purposes. FY 1981 shows a net revenue intake of $40,253, after nightly prizes, etc. Donations, contributions, loans to worthy organizations and individuals totalled $22,912 outstanding.

Recently, through a BIA loan, construction began on a new building to house not only the bingo games but to accomodate roller skating and other recreational activities. The $100,000 loan will be paid back in 5½ years. Complete cash-flow, profit/loss and balance sheets were submitted to and approved by the BIA in conjunction with the loan. The bottom line future of Tribal games looks very good.

Managerially, begun as an informal committee in February, 1979, in November of that year the Tribal Governing Board appointed 13 Tribal Members, mostly women to serve as the "Board of Directors." On July 6, 1981, their structure was formalized into a Tribal

enterprise corporation complete with articles of incorporation and a management plan. Their legal name is:

Lac Courte Oreilles Tribal Games Committee

6. Graphic Arts

Begun in 1977 as a small print shop to put out our Tribal newsletter, this operation has grown into a competitive, full-service business. Incorporation, as a Tribal enterprise, on November 12, 1979, Graphic Arts has $35,000 worth of equipment and supplies, which, during FY 1981 produced $54,000 in sales. With its now 4000 square foot building, they project $88,000 in sales for FY 1982, $106,000 for '83 and $125,900 for '84. Considering the growth from $14,574 in 1979, to $43,708 in 1980 and this years $58,226 (plus $10,000 in accounts receivable), we think the growth projections are very reasonable. We expect continued success from this enterprise. Their work is top-notch and they serve both government agencies as well as the private sector. They continue to produce our news - now a many paged monthly - and also most our in-house needs.

7. Failures

We must report the "passing on" of two ventures - a beauty shop which lasted only a few months and a cafeteria for our office building which did not justify continuation as a convenience loss. We discontinued the beauty shop because of lack of business and before a loss occurred. The cafeteria sustained a $3438 loss for FY 1981 and we covered by return and sales of supplies on hand.

8. Proposed

Our Overall Economic Development Plan sets forth a number of proposals for enterprise development of profits. We outline here,

(8. Con't)

briefly, three of those plus one more.

a) Fish Hatchery

A full feasibility study done by nationally recognized experts was completed over 4 years ago. The product remains viable, subject to funding. The BIA has shown new interest in this project and we are putting this back on our "laundry list." Up to date costs are being developed

b) Historical, Authentic Chippewa Indian Village

Continued interest in this project demonstrates its potential as a tourist attraction. Authentisity of every detail and a good location will make this an education experience as well. Our plans call for it to be near the Commercial Center. Estimated costs will likely be over $150,000 because of high land acquisition prices.

c) Sand/Gravel/Concrete Company

Since July, 1980, when this concept was expressed by the Development Corporation, two potential sites have been located. Feasibility studies, market evaluations, site examinations, soil borings, equipment analyses, production planning and financial studies must be made. With a component to produce a product - concrete blocks, patio stones, chimneys, etc. - year-round employment will be possible. This can be a vital business to provide capital formation for the Tribe. Estimated capitalization needed: $500,000.

d) Wild Rice Production

Prior to 1920, Lac Courte Oreilles produced 25,000 pounds of wild rice per year. It was a staple, one of the subsistence building blocks. While only in the "looking at" phase, particuliarly in connection with the Chippewa Flowage situation, we are highly motivated to restore this commodity to our tables and perhaps to others.

9. Explanations of Accompaning Statement

The following table does not include data as to the Development Corporation and Cranberry Marsh. Separate audits are being prepared. Since the Commercial Center has been under way for only 12 weeks no firm figures are yet available.

As to the items entitled "Tribal Garage and Gas Station", these shall soon be within the Commercial Center's operation as soon as the new building is constructed. The "Smoke Shop" is already combined with and integrated into the Commercial Centers operation.

LAC COURTE OREILLES STATEMENT EXHIBIT IV

STATEMENT OF REVENUE AND EXPENDITURES FOR TRIBAL ENTERPRISES, OCTOBER 1, 1980 to SEPTEMBER 30, 1981

	Forest Products 85901	Tribal Garage 85903	Print Shop 85926	Cafeteria 85923	Beauty Salon 85924	Tribal Garage 85934	Gas Station 85905	Smoke Shop 85920	Memo Total
REVENUES									
Sales-Goods & Services	$88,495	$40,253	$54,171	$7,626		$ 7,388	$124,123	$26,045	$348,101
Equipment Rental									21,083
Other-Accounts Receivable		21,083							
TOTAL REVENUE	88,495	61,336	54,171	7,626		7,388	124,123	26,045	369,184
EXPENDITURES									
Employee Compensation	8,297		30,396			15,939	4,588		59,220
Fringe Benefits	1,087		3,602			2,419	632		7,740
Equipment Purchases	5,750	8,619					175	150	14,694
Travel & Per Diem	163	838	4,687	177			2,667		8,574
Supplies	374	16,833	14,733	10,536		1,977	109,472	17,348	171,273
Equip. Repairs & Mnt	980		265	64					1,309
Rent, Comm., & Util.			1,848	287		801	51		2,987
Contract Services	35,135								35,134
Tech. Asst. & Trng.							56	1,087	24,280
Other	225	22,912							15,101
Stumpage	15,101							2,129	25,401
Notes Payable	21,662		1,610						
TOTAL EXPENDITURES	$88,774	$49,244	$57,141	$11,064		$21,136	$117,641	$20,174	$365,714
REVENUE OVER EXPENDITURES	(279)	12,092	(2,970)	(3,438)		(13,748)	6,482	5,331	3,470

Exhibit V

Lac Courte Oreilles
Tribal Government

Summary of General Fund Cash Register

		As of September 20,1981 (Deficit)
General Fund - Bank Balance		$(493,487)
Accounts Receivable from other funds		116,000
Less:		
Payroll Liabilities	(37,600)	
Payable to Other Funds	(241,200)	
Notes Payable - Short Term	(21,300)	
Notes Payable - Long Term	(20,210)	
		(320,310)
Net Cash Position		(697,797)
Less:		
Potential Prior Years Indirect Cost Over Recovery Laibility		(160,090)
Cash Position		$(857,887)

Exhibit VI

LAC COURTE OREILLES TRIBAL GOVERNMENT

BALANCE SHEET AS OF SEPTEMBER 30, 1981

DESCRIPTION	HEALTH	EDUCATION	B.I.A.	D.O.L.	ADMIN. SUPPORT	SOCIAL SERVICES	CONSTRUCTION PROJECTS	TRIBAL ENTERPRISES	MULTI YEAR PROGRAMS	CENTRAL FUNDS OPERATIONS	CENTRAL FUNDS PROPERTY	MEMO TOTAL
ASSETS												
CASH	$(12,800)	$404,500	$49,500	$8,500	$25,600	$13,200	$2,800	$19,700	$42,400	(493,500)		$59,900
TAXES RECEIVABLE												
EMPLOYEE RECEIVABLE												
RECEIVABLE FR. OTHER FUNDS		142,100	99,000					16,100		116,000		373,200
TOTAL CURRENT	(12,800	546,600	148,500	8,500	25,600	13,200	2,800	35,800	42,400	(377,500)		433,100
PROPERTY:												
LAND											$2,690,700	2,690,700
BUILDINGS											1,308,400	1,308,400
TOTAL ASSETS	$(12,800)	$546,600	$148,500	$8,500	$25,600	$13,200	$2,800	$35,800	$42,400	$(377,500)	$3,999,100	4,432,200
LIABILITIES												
NOTES PAYABLE										$21,300		$21,300
ACCOUNTS PAYABLE		$43,700	$5,600		$3,800	$15,200						68,300
ACCRUED EMPLOYEE COMP.	$4,900	24,100	1,900	$10,600		7,500		$35,400				84,400
WITHHOLDING TAXES										1,900		1,900
ACCRUED F.I.C.A.										2,800		2,800
ACCRUED UNEMPLOYMENT										29,800		29,800
ACCRUED WORKERS COMP.										3,100		3,100
OTHER LIABILITIES												
PAYABLE TO OTHER FUNDS	8,700			82,200	2,300	23,600	$1,600			241,200		359,600
TOTAL CURRENT	$13,600	$67,800	$7,500	$92,800	$6,100	$46,300	$1,600	$35,400	-0-	$300,100		$571,200
INDIRECT OVER-RECOVERY										$20,200		$20,200
LONG TERM NOTES PAYABLE												
TOTAL LIABILITIES	$13,600	$67,800	$7,500	$92,800	$6,100	$46,300	$1,600	$35,400	-0-	$320,300		$591,400
FUND BALANCE	(26,400)	478,800	141,000	(84,300)	19,500	(33,100)	1,200	400	42,400	(697,800)	3,999,100	3,840,800
TOTAL LIABILITIES & FUND BAL.	$(12,800)	$546,600	$148,500	$8,500	25,600	$13,200	$2,800	$35,800	$42,400	$(377,500)	$3,999,100	4,432,200

Exibit VII

LAC COURTE OREILLES TRIBAL GOVERNMENT
SUMMARY OF FISCAL 81-81 GRANT ACTIVITY (ACTIVE CONTRACTS)

Division Title	Award Amount	Cash Received	Less Indirect	Cash Available To Programs	Total Expense	Excess of cash Received over Paid out	Contract Award Over (Under) Expenditures
Health Division	$ 666,651	538,070	32,887	505,16	526,609	(21,426)	107,155
Education Division	4,977,449	3,081,805	241,506	2,840,299	2,389,766	450,533	2,346,177
Bureau of Indian Affairs	414,876	384,694	28,029	356,665	316,149	40,516	70,608
Department of Labor	415 467	343.530	3,565	339,965	387,433	(47,468)	24,469
Social Service Division	432,404	341,152	11,358	329,794	346,169	(16,375)	74,877
Tribal Misc. Programs	5,734	534	-	534	1,256	(722)	4,478
Administrative Support Division	139,779	126,857	-	126,857	103,542	23,315	36,237
Sub-Total	$ 7,052,270	4,816,642	317,345	4,499,297	4,070,924	428,373	2,664,001
Construction Projects	830,000	719,666	-	719,666	714,087	5,579	115,913
Total	$ 7,882,270	5,536,308	317,345	5,218,963	4,785,011	433,952	2,779,914

Exhibit VIII.1

LAC COURTE OREILLES

TRIBAL GOVERNMENT

Examples of indirect cost as applied to tribes

THEORETICAL OVER-RECOVERY: EXAMPLE #1

DEFINITION: Theoretical over-recovery occurs when the actual expense of the I/C pool is less than the amount justifying the approved rate as determined by the subsequent OIG. audit.

AUDIT:

FY	Approved Rate	Approved Budget	Actual Expense	Negative Difference
81	28.2%	$950,000	$600,000	$350,000

ACTION: Rate for fiscal year 1983 is negatively adjusted by 350,000, thus:

FY	Proposed Rate	Approved Budget	Adjusted Rate	Adjusted I/C Pool Income	Actual Expenses	Additional Tribal Debt
83	20%	$700,000	[10%]	$350,000	$700,000	[$350,000]

AFFECT: The Tribe would be expected to spend in Fiscal Year "82 $700,000 while only being allowed to recover $350,000 due to the adjust for the $350,000 not spent in the prior fiscal year. This creates a situation where the Tribe must find an independent source of revenue or go in debt if it has no other sources of revenue.

This case assumed that the budget was fully funded (950,000) even if in fact it was not and is required if the Tribe wants to avoid actual over-recovery on grants which they drew indirect cost at 28.2% (Fy "81) rate.

Exhibit VIII.2

THEORETICAL UNDER-RECOVERY: EXAMPLE #2

DEFINITION: Theoretical under-recovery occurs when the actual expense of the indirect cost pool exceeds the amount justifying the appoved rate as determined by the subsequent OIG audit.

AUDIT:

FY	Approved Rate	Approved Budget	Actual Expense	Positive Difference
82	20%	$600,000	$800,000	$200,000

ACTION: Rate for Fiscal Year "84 is positively adjusted by $200,000.

FY	Proposed Rate	Approved Budget	Adjusted Rate	Adjusted I/C Pool Income	Actual Expenses	Cash Credit
84	20%	$800,000	25%	$1,000,000	$800,000	$200,000

AFFECT: The Tribe would be expected to spend $800,000 while recovering $1,000,000. This would have the tendency to inflate the expenses such that an ever increasing rate would occur. However, as the rate increases the difficulty of full recovery at that rate becomes increasingly difficult and thus a moot issue.

EXHIBIT VIII.3

ACTUAL OVER RECOVERY: EXAMPLE #3

DEFINITION: Actual over recovery occurs when a individual contract pays more than what the approved Indirect Cost rate allows.

CONTRACT:

NAME	DEPARTMENT	FY	APPROVED RATE	APPROVED RECOVERY	ACTUAL RECOVERY	ACTUAL OVER-RECOVERY
Johnson O'Malley	B.I.A.	'80	20.9%	$14,324	$25,593	$11,269

AFFECT: The Tribe in this case received $11,269.00 more than they should have creating payback liability which must surface during the closeout process. It would be left up to the funding agency to initiate the mechanism for payback as the liability has no relationship to the carry-forward adjustment on any future indirect cost rate.

This happens when the actual recovery rate ($) was at an indirect cost rate (%) higher than the finally approved rate. The two rates are an outcome of under funding the original Indirect Cost budget.

EXHIBIT VIII.4

ACTUAL SHORT-FALL (UNDER-RECOVERY): EXAMPLE #4

DEFINITION: Actual under-recovery or shortfall occurs when an individual contract pays less than what the approved Indirect Cost rate allows.

CONTRACT:	NAME	DEPARTMENT	FY	APPROVED RATE	APPROVED RECOVERY	ACTUAL RECOVERY	ACTUAL UNDER - RECOVERY
	Title I	B.I.A.	'80	20.9%	$13,759	-0-	$13,579
	Voc. Ed.	Ed.	'80	20.9%	$38,007	$23,305	$14,702

AFFECT: These two examples show no recovery at all and partial recovery. The difference between the approved recovery and the actual recovery is approximately $28,500 where the Tribe must provide the cash either through independent revenues or go into debt. If the Tribe does neither, then the difference reduces the cash available for the indirect cost pool which would create a negative carry-forward adjustment in the future indirect cost rate.

In this particular case, the Tribe went in debt at our local bank through the umbrella arrangement for offsetting deficit accounts because we needed this level of administrative support to effectively administrate federal grants and contracts.

Exhibit IX

SUMMARY

THREE YEAR HISTORY OF SHORTFALLS IN INDIRECT COST

History of the last three years of Indirect Cost activity shows the following:

- Actual spending equal to the approved budget plus, in 1979 and 1980, an over-recovery of Indirect Cost from some programs.
- Actual funding of the Indirect Cost Pool to be much smaller than the approved budget plus over-recovery, leading to large deficits in all years. These deficits are cumulative.

FISCAL YEAR	APPROVED RATE	APPROVED BUDGET	OVER RECOVERY	TOTAL SPENDING	ACTUAL FUNDING	SHORT FALL
1979	7.6%	$267,691	$88,636	$356,327	$150,464	($205,863)
1980	20.9%	565,322	71,454	636,776	303,660	($333,116)
1981	17.7%	599,146	0	599,146	380,668	($218,478)
TOTAL		$1,432,159	$160,090	$1,592,249	$834,792	($757,457)
Budget compared to actual funding		$1,432,159			($834,792) =	$597,367 160,090 $757,457

The Tribe has made significant cuts in its administrative budget for FY 1981 in order to reduce the Indirect Cost rate to 17.7% from 28.2%. For the most part, salaries have been frozen at FY 1980 levels, and elimination of various positions and cuts in most departments have been effected since February/March 1981.

Details of Indirect Cost funding by program appears on the following pages.

Exhibit X

LAC COURTE OREILLES

TRIBAL GOVERNMENT

Reduction in Indirect Cost Expenditures

Line Item	Original Approved FY "81 Indirect Cost Budget	Actual First Quarter Expenses October 1 - Dec. 31 1980	Revised FY '81 Indirect Cost Budget	Actual Last Quarter Expenses July 1 - Sept. 30 1981	Total Annual Expenditures
Salaries & Wages	153,632	$127,747.07	101,270	$72,333.60	96,773
Fringe Benefits	23,752	12,490.08	16,750	7,481.11	12,788
Travel	17,362	15,349.13	7,970	4,190.24	10,029
Supplies	13,410	8,736.48	6,055	24,151.01	10,827
Utilities, Maintenance, Other	28,898	15,509.86	17,297	13,062.96	18,018
	$237,054	$179,832.62	$149,342	$121,218.92	$148,435
Monthy Basis	$79,018	$59,944	$49,781	$40,406	$49,475
Annual Basis	$948,217	$719,330	$597,368	$484,875	$593,721
TOTAL ANNUAL BUDGET (EXPENSES)			$597,368		593,721
ACTUAL AGENCY FUNDING			380.668		380,668
SHORTFALL			$216,700		$213,053

EXHIBIT XI. 1

State Bank of Drummond

P.O. Box 69 Drummond, Wisconsin 54832 Phone: 715-739-6222

July 14, 1981

Mr. Gordon Thayer
Chairman
LCO Tribal Governing Board
Route 2
Hayward, WI 54843

Dear Gordon:

With some dismay I must report to you that beginning January 1, 1982 we will no longer be able to merge the various accounts of the Tribe into one balance. As you know, during the past 18 months this program has enabled the Tribe to utilize all funds on deposit with the Bank without having to make transfers to cover overdrafts in the general fund. This has been a cost savings procedure both for the State Bank of Drummond and for the accounting department at LCO. However, as the enclosed notice from the Federal Deposit Insurance Corporation indicates we will no longer be able to offset over drafts against accounts that have funds, even though they are held in the same right and capacity.

I would appreciate if you would make provisions to handle this practice as soon as practical within your accounting department as I believe it should be instituted prior to January 1, 1982 to insure it is working smoothly.

If you have any questions or if I can be of any assistance, please feel free to contact me.

Sincerely,

Raymond J. Rudnicki
President

RJR/vv
CC: Darrell Coons
Duane Slayton
enc.

FDIC Branch Offices Barnes, Wisconsin 715-795-2304
Cable, Wisconsin 715-798-3648

EXHIBIT XI. 2

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE CONTROLLER

REPORT OF CONDITION

BL-43-81
July 8, 1981

TO: CHIEF EXECUTIVE OFFICERS OF INSURED BANKS

SUBJECT: Offsetting of Overdrafts in Accounts Held in the Same Right and Capacity

A review of reporting procedures and requirements under the Federal Deposit Insurance Act has revealed that a practice that has been allowed for a number of years violates the statute. This practice is the offsetting in Reports of Condition of overdrafts in one account against funds in another account if the accounts are held in the same right and capacity. Section 7(a)(4) of the Act states in part:

> "....each insured bank shall report the total amount of the liability of the bank for deposits in the main office and in any branch....without any deduction for indebtedness of depositors or creditors (emphasis added)...."

All overdrafts must be reported in future Reports of Condition on a gross basis with no offsets between accounts even if they are held in the same right and capacity. This will be the case for both commercial and trust accounts.

This revised reporting procedure will become effective on January 1, 1982, and will apply beginning with the March 31, 1982, Report of Condition. If you have any questions on this matter, please call the undersigned toll-free on 800-424-4334, extension 735.

J. David Shafer
Fiscal Agent

Distribution: Insured Commercial and Mutual Savings Banks

EXHIBIT XI.3

LAC COURTE OREILLES TRIBAL GOVERNING BOARD
Pride Of the Ojibwa
Route 2 • Hayward, Wisconsin 54843
(715)634-8934

March 14, 1980

State Bank of Drummond
Drummond, Wisconsin

RE: Tribal Bank Account(s)

Attention: Raymond Rudnicki, President

As your largest customer, we have an urgent requirement to ask of your bank:

> Except for our Housing Authority and Tribal Enterprises, the sum total of all our accounts with you must daily be considered as arithmetically consolidated.

An over-draft, for example, would only come to the fore when the sum total of all checks presented exceed deposits. This allows us to properly deposit to the requisite accounts and yet know that an under-draft in one account permits an over-draft in another. Upon a consolidated over-draft position, notes or other line-of-credit short-term arrangements can be made to cover that interim shortage. Likewise this would lessen the probabilities of transfers and similar adjustments.

Not just thousands but millions flow through your bank as generated by us. We feel this request is consistent with banking principles and guidelines. If you see some legal difficulty with providing us with this courtesy, please advise immediately.

Sincerely,

R. Duane Slayton
Acting Executive Director

Exhibit XI.4

RESOLUTION NO. 80-68

Passed July 8, 1980

RESOLUTION AUTHORIZING DEPOSITORY BANK TO TRANSFER FUNDS AMONG CHECKING ACCOUNTS.

By the lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, a Federally recognized Indian tribe, here and after referred to as Tribe.

WHEREAS the undersigned has designated the State Bank of Drummond, Drummond Wisconsin, hereinafter referred to as "Bank" as the depository bank for the funds of the Tribe, and,

WHEREAS the Tribe presently maintains numerous accounts including checking accounts at said Bank and may, as needed, establish additional accounts at said Bank, and,

WHEREAS it is in the best interest of the Tribe that said Bank be authorized and empowered to transfer funds from Tribe accounts, including checking accounts presently maintained, or to be established into other accounts including checking accounts presently maintained or which are established in the future,

IT IS HEREBY RESOLVED that said Bank is authorized, and empowered to transfer funds from any Tribe account or checking accounts into any other account or checking account of the Tribe, presently maintained or which are established in the future, when in the sole discretion of the Bank it is deemed desirable for banking purposes, provided that the Tribe shall be given notice of any transfers and deposits within a reasonable time after any transfer is made. For purposes of this resolution only, notification in the monthly checking account statement shall be notice within a reasonable time.

IT IS FURTHER RESOLVED that the Tribe assumes full responsibility and holds harmless the Bank for any and all transfers made pursuant to this resolution.

Exhibit XI, 5

IT IS FURTHER RESOLVED that this resolution supplements and does not replace or repeal any previous resolutions of the Tribe relating to deposits with the Bank.

Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, a Federally recognized Indian Tribe.

BY:
Lac Courte Tribal Governing Board

Chairman

Vice Chairman

Secretary Treasurer

Counsel Member

Counsel Member

Exhibit XII.1

LAC COURTE OREILLES
TRIBAL GOVERNMENT

Tribal Asset Usage

Tribal Timber Example*

Annual Allowable Cut of Timber on a Sustained - Yield Basis	Accumulated Allowable Cut as of 1/1/79 of All Timber Types****	Approximate Current Fair Market Value of Accumulated Allowable Cut
Pulp/firewood: 10,362 cords**	80,238 cords	$2,785,940
Sawlogs : 475 MBF***	3,349 MBF	414,262
		$3,198,202*****

* Includes Timber on all 17,000 acres, of which only 10,000 acres are suited to modern, forestry, sustained-yield practices

** A "cord" is a unit of measurement of logs piled 8' x 4' x 4'

*** MBF stands for thousand board feet, a board foot being 12" x 12" x 1"

**** But does not include hemlock and tamarack

***** Approximate "stumpage" value $386,435 (sale of standing timber)

Exhibit XII.2

LAC COURTE OREILLES

TRIBAL GOVERNMENT

Tribal endowments and Settlements

Lac Courte Oreilles Tribe participated in judgement claims awarded by the Court of Claims for damages to the tribe involving the sale of land under the 1837 and 1854 treaty. These claims are called: Docket 18-C STU. Lac Courte Oreilles share of the total award is approximately 3.3 million dollars. Many other Bands of Lake Superior Chippewas and Mississippi Chippewas participate in this award. In addition to these dockets there is Docket 18-S and 18-U which have not been appropriated.

Docket 18-C was appropriated in 1974 and Docket 18-T was appropriated on October 31, 1972. The principle amount for Docket 18-C and 18-D was $1,122,603.84. The total interest on these two (2) dockets as of August 31, 1981 was $944,416.93. Thus, the total of 18-C and 18-D principal plus interest as of August 31, 1981 equals $2,670,020.77.

By statute there is mandated that 20% of the judgement claims award must be directed toward Tribal Government. Prior to use of these judgement claims money, it is imperitive that the Tribe come up with a payment roll and a distribution plan voted upon by the members of the Tribe in a referendum called for that purpose.

OTHER LITEGATION

Lac Courte Oreilles Tribe is presently in settlement negotiations with Northern State Power Company and others regarding the Chippewa Flowage which is partially inundates the Lac Courte Oreilles Reservation. As a result of flooding for power purposes the Lac Courte Oreilles Tribe is damaged by that action which devastated a rice crop which has been stipulated to of been 25,000 pounds per year. The market rate for wild rice today varies between $5.00 and $8.00 per pound. Although it is too early to predict the outcome of this matter, it is clear that the Tribe has suffered damages for over 61 years for the loss of rice, which must be addressed. Also the Tribe continues to suffer the loss of rice every year that the power dam is operated for power purposes.

Finally, the Lac Courte Oreilles Tribe is also suing a vendor for a fraudulent sale of equipment to the Tribe. This complaint entails damages in the amount of approximately $370,000 dollars. Again it is too early to tell whether the Tribe's demands will be met.

EXHIBIT XIII

LAC COURTE OREILLES
TRIBAL GOVERNMENT

PROBABLE IMPACT OF NOT SOLVING THIS PROBLEM

The affect of not receiving Immediate Economic Relief is quite dramatic. We have cited below a number of events which could occur, for instance:

1. There would be a freeze on Federal Program Funds of approximately $500,000.00, which are now in other accounts in the State Bank of Drummond to off-set therein the General Fund Account now in deficit in that amount.

2. In order to continue operations for the next 6 to 9 months would require misuse of these Federal Program Funds. Approximately June of 1982, there would be a complete shut-down of all grant and contract activities as a result of the State Bank of Drummond freeze. As a result of being a defaulted contractor, we may not be eligible for subsequent program funding for FY 1982 - 83 and future years.

3. The Education Program, and the related school employees and children, would be shut-down as a result, about 300 students would be required to go into local school districts with corresponding increase costs to the school districts; federal funding would be required to give Indian Children a proper education. Buildings, which have presently been paid for would not be effectively used. In addition, about 100 employees and instructors would not be employed, of which, about 50 are non-Indian.

4. Unemployment compensation and other forms of financial aid would be required for approximately 2000 Tribal Members.

5. The Tribal Enterprises provide the ability for the Tribal Government to enjoy the economic multiplier effect. We believe the multiple affect is at least 2½ to 3 times the initial level of federal program funding. The annual Tribal budget is $7,500,000 to $8,000,000.00. On this basis the minimum economic effect is between 20,000,000 to $24,000,000 per year.

6. Discontinued Tribal Operations would be a waste of past expenditures for various buildings, goods and services and personnel. Major investments have been made in personnel training to administer an effective and efficient Tribal Government and the related Federal Programs. In addition, the cost of Tribal Operations would require a major rebuilding of the Tribal Governments goals and ojbectives without changing the overall costs to the Federal Government.

7. We anticipate the Bureau of Indian Affairs would be forced to administer various grants and programs such as the P.L. 638 activities.

EXHIBIT XIV

LAC COURTE OREILLES
TRIBAL GOVERNMENT
FY 1982 INDIRECT COST BUDGET

DEPARTMENT	DEPARTMENT BUDGET	PERCENT CHARGED TO INDIRECT	INDIRECT BUDGET
TRIBAL COUNCIL			
SALARIES	$148,700.00		
FRINGE BENEFITS	24,600.00		
OTHER	67,500.00		
SUBTOTAL TRIBAL COUNCIL	$240,800.00	50%	$120,400.00
ACCOUNTING			
SALARIES	175,285.00		
FRINGE BENEFITS	29,000.00		
OTHER	15,000.00		
SUBTOTAL ACCOUNTING	$219,285.00	100%	$219,285.00
DATA PROCESSING			
SALARIES	32,400.00		
FRINGE BENEFITS	5,400.00		
OTHER	21,500.00		
SUBTOTAL DATA PROCESSING	59,300.00	100%	$ 59,300.00
ADMINISTRATION			
SALARIES	108,235.00		
FRINGE BENEFITS	17,900.00		
OTHER	34,450.00		
SUBTOTAL ADMINISTRATION	160,585.00	100%	$160,585.00
SPACE COSTS			
SALARIES	48,205.00		
FRINGE BENEFITS	7,937.00		
OTHER	35,000.00		
SUBTOTAL SPACE COSTS	91,178.00	47.6%	$ 43,400.00
SWITCHBOARD			
SALARIES	9,460.00		
FRINGE BENEFITS	1,564.00		
OTHER	32,000.00		
SUBTOTAL SWITCHBOARD	43,024.00	30%	$ 12,900.00
TOTAL	$814,172.00		$615,870.00

EXHIBIT XV

LAC COURTE OREILLES
TRIBAL GOVERNMENT

ESTIMATED NET INCOMES OF TRIBAL ENTERPRISES

	FY 81	FY 82	FY 83
Commercial Center	$47,000	$162,500	$ 82,500
Cranberry Marsh	N/A *	135,000	30,000
Development Corporation	N/A **	250,000	150,000
Forest Products	(279)	50,000***	75,000***
Games	12,092	41,000	6,600
Graphic Arts	(2,970)	1,500	15,000
	$55,843	$640,000	$359,100
50%	27,921	320,000	179,550
30%	16,752	192,000	107,730

* Deferred to 1982

** Profits Carried Forward to Finance New Projects

*** Including "Stumpage" monies returned to Tribe

Exhibit XVI

LAC COURTE OREILLES
TRIBAL GOVERNMENT

Suggested revision to the Indirect Cost Reimbursement Funding Approach.

Recommendations for Discussion

1. For fiscal year "81, intervene to secure full funding for contract support at the rate negotiated and approved by the Office of Inspector General. Modifications to individual contract per each federal funding agency would be required.

2. Contract support funding in the form of "Cost Allocation Plans" are not being approved by OIG for medium to small Indian Tribes, although such plans maybe more workable by tribes such as ours.

3. The Cognizant Agency should also function as the lead funding agency by supporting the Tribe with its indirect cost budgeted funds and then seeking reimbursement from the other funding agencies.

LAC COURTE OREILLES TRIBAL GOVERNING BOARD
Pride Of the Ojibwa
Route 2 • Hayward, Wisconsin 54843
(715)634-8934

RESOLUTION NO._____

WHEREAS, the Lac Courte Oreilles Tribe has experienced phenomonal growth in the past 10 years, increasing our population on the Reservation by 100% and going from a Tribal Budget of $1500 to now over $6,000,000 per year, and

WHEREAS, the Tribal governmental employment has gone in 10 years from no full-time employees to a seasonal high of over 300 people, and

WHEREAS, implementing and developing the concepts of sovereignty, self-determination and self-sufficiency takes an adequately funded, strong, well-organized Tribal Governing Board and central administrative staff, and

WHEREAS, the main means of funding central Tribal Government is through U.S. Government procedures under "Indirect Cost" program(s) which the Lac Courte Oreilles Tribe began to increasingly participate in over the past 4 years, and

WHEREAS, the annual budgetary needs of Lac Courte Oreilles central Tribal Government is $1,000,000, but even projected funding has fallen woefully short of that figure, and

WHEREAS, demands on central Tribal Government continue to increase as the population grows and more and better services are requested by Tribal members, and

WHEREAS, indirect cost funding consists of the application of a governmently authorized percentage of revenues attributable to various governmently supported programs which is presumably reflective of the common utilization of central administrative services by the various programs, and

WHEREAS, the Tribe during recent years has been assigned varying indirect cost rates, and

WHEREAS, despite the assignment of a particular indirect cost rate the various agencies of the Government which contract with the Tribe may or may not apply the established rate to program funding and upon their initial utilization of a particular rate may adjust the rates thereafter due to limitation of funds, and

RESOLUTION NO._____
Page - 2

WHEREAS, the Bureau of Indian Affairs has asserted an ability to pay only approximately one half of the Tribe's approved indirect cost rate in recent years, and

WHEREAS, any deficiency in contribution toward the central administrative expenses by any government agency means that the fund, if projected correctly, will be inadequate to meet the needs of the central administrative services of the Tribe, and

WHEREAS, the problem has been greatly compounded because those agencies which have allowed an adequate contribution toward central administrative government are authorized thereafter to seek a rebate if expenses utilized by central administrative government exceed the projected amount, and

WHEREAS, the above procedures are especially adverse to Indian Tribes because of the wide range of administrative detail and the many agency programs associated with a fully functioning Tribal Government, and

WHEREAS, the above procedures impair the proper functioning of tribal government and impair adequate projections and accountability in that (1) Indirect Cost funds cannot form an adequate basis of administrative services of an Indian Tribe unless all agencies with whom the Tribe deals honor the Indirect Cost rate established by the appropriate federal agency (2) some agencies because of their internal policies or because of their limitation of funds do not honor the rate but rather set a lesser rate thereby creating a deficit in monies necessary to run the established programs (3) upon the creation of a deficit those federal agencies that do contribute in accordance with the established rate or less than the established but more than the average contribution among the agencies, thereafter seek a rebate of funds or reduction during the following year's funding (4) the above creates a downward spiral that can be resolved only through reduction of program services, federal agencies honoring the original committment, or additional monies being brought in to fill the void, and

WHEREAS, the cash flow problems that Lac Courte Oreilles is currently suffering results from the transportation of inter-governmental accounting within a single agency under a standard rate to the application of governmental funds from many agencies, with many different standards and different policies, tribal affairs, and

WHEREAS, the monitary problems at Lac Courte Oreilles have been exasperated in the past three years due to accumulating under-recoveries each year, and

RESOLUTION NO._____
Page - 3

WHEREAS, the Bureau of Indian Affairs has recently based it's indirect cost rate attributable to Lac Courte Oreilles at a proportional share less than other tribes because of Lac Courte Oreilles' conservative estimates of it's forthcoming expenditures thus resulting in a proportionate disadvantage to Lac Courte Oreilles; while, however, at the same time the Bureau of Indian Affairs at its reduced rate paid a indirect cost rate to Lac Courte Oreilles in excess of other agencies, and

WHEREAS, the Bureau of Indian Affairs has specified that due to its paying a rate greater than other agencies, it is entitled to a rebate, and

WHEREAS, the problems inherent in the fallacious reasoning behind indirect cost accounting do not arise in any manner from the policies, practices or programs of the Tribe, and

WHEREAS, the Tribe's banking institution, State Bank of Drummond, has been in the practice of considering all the various accounts of the Tribe as one account for purposes of ascertaining a daily balance, and

WHEREAS, this procedure has been approved and permitted by the Wisconsin State Banking Commissioner, and

WHEREAS, all of the accounts of the Tribe are held by the Tribe in the same right and capacity, to wit, the authority of the Tribal Governing Board over the fiscal activities of the Lac Courte Oreilles Tribe, and

WHEREAS, the indirect cost cash shortfall as aforesaid has resulted in one Tribal bank account, the general fund account, to be operating in the red for a number of months, although offset by a positive balances in all other accounts as totalled, and

WHEREAS, as of January 1, 1982, the Federal Deposit Insurance Corporation is not permitting this practice of off-setting to continue, and

WHEREAS, there appears to be no way being legally exempt from this recent determination of FDIC, and

WHEREAS, this recent ruling will result in a chaotic and crippling situation come the first of the year in 1982, and

RESOLUTION NO._____ ,
Page - 4

WHEREAS, since the current financial difficulties of the Tribe were created through application of governmental procedures, it is appropriate that the Tribe seek assitance from the federal government in addressing in a fiscally responsible manner the current deficit, particularly since the Tribe has no tax base upon which to draw, and

WHEREAS, the Lac Courte Oreilles Tribe has sought technical assistance from the Bureau of Indian Affairs in addressing inadequate contract support funding on numerous occasions in-prior years, and

WHEREAS, the Bureau of Indian Affairs has failed to actively address Lac Courte Oreilles' request for technical assistance on the inadequacies of indirect cost funding, and

WHEREAS, the lack of technical assistance has compounded and contributed to the problem of understanding indirect cost funding by the Lac Courte Oreilles Tribe, and

WHEREAS, the working relationship between the Office of Inspector General and the Lac Courte Oreilles Tribe has deteriorated in prior years because of a lack of adequate understanding of indirect cost principles, and

WHEREAS, the Lac Courte Oreilles Tribe has now begun to comprehend the complexities and inadequacies of Indirect Cost funding and has implemented necessary corrective action i.e. reduction in tribal administrative staff, reduced administrative spending levels, reduced the FY 1982 Indirect Cost Rate, testified to the House Interior Appropriations Committee with detailed documentation on the harships caused by the inadequacies of Indirect Cost funding,

NOW THEREFORE BE IT RESOLVED, that the Bureau of Indian Affairs in conjunction with its trust responsibility to federally recognized tribes assist the Lac Courte Oreilles Tribe through this financial crisis created by the inadequacies of Indirect Cost funding, by considering the following proposals:

1. Provide long term (10 year) low interest loan to the Lac Courte Oreilles Tribe that would include the $650,000 deficit created by inadequate indirect cost funding and $150,000 necessary for operating capitol for FY 1982, and

2. Write off the actual over-recovery deficit of $160,000 created in FY 1979, 1980, and 1981.

RESOLUTION NO._____
Page - 5

3. Take appropriate action to prevent further financial shortfalls created by the inadequacies of the Indirect Cost funding formula

CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Lac Courte Oreilles Tribal Governing Board, hereby certify that the Governing Board is composed of____members of whom_____, being present, constituted a quorum at a meeting thereof duly called, convened, and held on this_____day of _____, 1981; that the foregoing resolution was duly adopted at said meeting by an affirmative vote of_____members;_____against, and that said resolution has not been rescinded or amended in any way.

_____
James H. Schlender, Secretary-Treasurer
Lac Courte Oreilles Tribal Governing Board

C.D. 10-1-81

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
MINNEAPOLIS AREA OFFICE
15 SOUTH FIFTH STREET
MINNEAPOLIS, MINNESOTA 55402

IN REPLY REFER TO:
Contracts-Admin

SEP 30 1981

Gordon C. Thayer, Chairman
Lac Courte Oreilles Tribal Governing Board
Route 2
Hayward, WI 54843

Dear Mr. Thayer:

This letter is in reply to several questions you asked in your letter of August 7, 1981.

Additional funding to the amount of $36,000.00 has been made available for continuation of your contract with Coopers and Lybrand. These funds have been obligated under Contract No. F50C14201915.

You express concern over which a bank could force your government into receivership which would come under the federal proceedings contained in the Revised Bankruptcy Act of 1978, Pt. L. 95-598, 11 U.S.C.§§ 101-1482.

It is our Solicitor's opinion that a tribal government may not be a debtor under Section 109 of the Federal Bankruptcy Act. That section provided that

> 'only a person that resided in the United States, or has a domicile, a place of business, or a municipality may be a debtor under this title.'

Person is defined as "individual, partnership and corporation, but does not include governmental unit." 11 U.S.C. § 101(30).

Municipality means "political subdivision or public agency or instrumentality of a state." 11 U.S.C. § 101(29).

They further state,..."It is clear, then, that a tribal government does not fall within the provisions of Section 101, and therefore, the Bankruptcy Act does not apply."

They also mention that as to a tribal corporation the conclusion is the same, but less direct. The Solicitor states corporations are "persons" who may be debtors under Section 109, but tribal businesses incorporated under tribal law have special characteristics - chiefly owing to the limitations on their susceptibility to suit - which effectively preclude application of the Bankruptcy Act. Tribal businesses chartered under a tribal constitution may have some assets specifically pledged to meet the debts of the corporation. Other property not specifically pleged or assigned is not generally available to satisfy debts, however.

The question as to whether the bank can collect monies from your other accounts to satisfy a delinquent account, however, would be applicable to state and federal banking statutes. Banks normally in the course of sound business practices require depositors with more than one account to sign statements allowing them to secure funds from another account to satisfy a deficit account.

We should point out that the Bureau of Indian Affairs has no requirement that you maintain separate bank accounts for each program and that the administrative funds be kept separate. A contractor has an obligation to spend the funds in a contract for the purposes of the contract, see 25 CFR § 271.74 (3). Our fiscal accountability requirement is that a contractor's accounting records meet acceptable accounting standards, see 25 CFR § 271.46. This is to provide an audit trail on all the line items in each contract. The only exception to the above is some education programs.

Contracts and grants under P. L. 93-638 are cost reimbursable and as such funds should be advanced only enough to cover immediate needs. Since you are under the letter of credit system to satisfy expenditures under your contracts the regulations of the U. S. Treasury apply. Chapter 2000 § 2025 of the U. S. Treasury Manual states "Advances - shall be limited to minimum amounts necessary for immediate disbursement and shall be timed to be in accord only with the actual immediate cash requirements - in carrying out the purpose of an approved program."

If a contractor has excessive amounts of cash on hand beyond their immediate needs, they would be in violation of the above regulations which could lead to a suspension of their letter of credit.

If a contractor had received advances of funds for a contract and lost control of these funds this would not excuse the contractor from performing the contract. Failure to perform would be a breach of contract, see § 271.75 of 25 CFR.

The dilemma in which you are now faced is caused, and it appears we are in agreement on this, that is has been brought about by an excessive indirect cost rate in prior years leading to large amounts of over recovery. A review of your accounts receivable from previous years to present shows that you are making good progress in extraditing yourself from the problem.

We would suggest that for Fiscal Year 1982 careful attention be given in budgeting administrative costs for each program. It would also appear that you are probably going to have to make a determination as to whether a reduction of administrative and program staff may not be necessary in order to further reduce your accounts payable. It seems fairly certain that there will be further program cuts this coming year and if it is desirable to maintain past service levels as much as possible, staff may have to be reduced. The fact that other government agencies do not provide full indirect costs for their contracts is a problem with many tribal contractors. We are asking the Central Office to bring this to the attention of Congress with some possible solutions.

If we can be of further help in aiding you in this problem, please advise.

Sincerely,

Acting Area Director

Senator MELCHER. Gordon C. Thayer, chairman, Lac Courte Oreilles Tribal Governing Board?

You may proceed, Mr. Thayer.

STATEMENT OF GORDON C. THAYER, CHAIRMAN, LAC COURTE OREILLES TRIBAL GOVERNING BOARD

Mr. THAYER. Mr. Chairman, thank you for giving us the opportunity to provide testimony on this bill. We appear before you today to present both written and oral testimony regarding a serious shortfall in contract support dollars. This is commonly referred to, by us, as the indirect cost problem.

Members of the Lac Courte Oreilles Tribal Governing Board have previously given briefings to both our Congressman and our Senator; the House Interior and Insular Affairs Committee; the Bureau of Indian Affairs; and the staff members of the Senate Select Committee.

For the Lac Courte Oreilles Tribal Government, the amount of the indirect cost problem resulting from shortfall of contract support moneys has reached approximately $750,000 over the last 3 years. Of that deficit amount, the tribe has already contributed $300,000 which leaves the tribe in deficit in the amount of $450,000 at the present time.

Although we believe in paying our just debts, this debt which has arisen as a result of indirect cost shortfall is the direct result of conflicting Federal statutes. On the one hand, the Federal Government must regard a tribe which submits an indirect cost proposal as having recovered all the money which is proposed, despite that not having occurred; and on the other hand, the Government allows various agencies to pay less than the full indirect cost rate by virtue of statutory limitations on the amount of indirect cost they may pay. It is precisely this dilemma which has caused the tribal government to experience a shortfall of contract support money for the past 3 years.

One might ask why this 3-year problem was not addressed sooner. In response, the Lac Courte Oreilles Tribal Governing Board would say that the tribe has experienced phenomenal growth which has outstripped the tribe's ability to keep pace with an administrative structure. Only during the past 3 years has the tribal governing board been able to implement the structure needed to monitor the indirect cost problem.

It should be stated at the outset, for the present fiscal year the tribal governing board is keeping a monthly monitor on revenues and expenditures of the indirect cost proposal so as to minimize, and hopefully to eliminate, any indirect cost shortfall or overrecovery. It should also be noted that the damage arising from the indirect cost problem is one which will continue until Congress chooses to address this peculiar problem.

As a last resort, the tribe has sought to use its 20-percent share of the moneys awarded to the tribe from the Indian Claims Commission for lands that were previously sold under the terms of a treaty in the middle 1800's. The purpose for which this money will be used is to support the administration of Federal contracts. The reason the money was awarded to the tribe was because the amount paid by the U.S. Government in return for lands ceded under treaties

was found to be inadequate, and the awarded moneys are the U.S. compensation for lands sold at less than a fair price.

We feel deeply that these moneys would be better used to leave a legacy for our children and grandchildren rather than to be used for the support of Federal contracts. It is thus our sincerest hope that Congress will address the problem of indirect-cost shortfall and award to the tribe, a sum, which would reimburse the expenditure of judgment claims money in support of Federal contracts.

Senator MELCHER. Chairman Thayer, how many members are on the tribal governing board?

Mr. THAYER. We have seven members on the governing board.

Senator MELCHER. Seven members including yourself?

Mr. THAYER. Yes, sir.

Senator MELCHER. Did you develop this proposed bill with Senator Proxmire and the BIA?

Mr. THAYER. Yes, sir; as I have indicated in the written testimony, we have provided briefings to the House Interior and Insular Affairs Committee; Senator Proxmire's office; Congressman David Obey's office; and the Bureau of Indian Affairs.

Senator MELCHER. My good friend and former colleague, Dave Obey, has successfully presented his version of the bill, which I assume is identical to S. 1890, to the House Interior Committee.

Mr. THAYER. Yes, sir.

Senator MELCHER. I understand they reported it out. So, Senator Proxmire's bill, the one we are having the hearing on today, is identical to that reported bill, or have they modified it somewhat?

Mr. THAYER. Not that we are aware of, sir. I believe it contains the same language.

Senator MELCHER. I understand the Department of Interior has suggested a couple of minor amendments to the language. We will ask the Department to acquaint us with those minor amendments so that we, too, can be cognizant of them.

Are you aware of those?

Mr. THAYER. No, sir.

Senator MELCHER. We have that in the report, and it was given in testimony today. It is: "Insert the trust account number," a correction of that which is just transposing the numbers 9728 instead of 9278—just a minor correction. And then: "Insert the words 'overrecovery or the' before the word 'underrecovery' in section 2 of the bill."

I think you would agree, then, Chairman Thayer, those are necessary corrections.

Mr. THAYER. Right.

Senator MELCHER. They reported it out that way. We will report ours out the same way.

Is it my understanding that the action taken by the board is approved by the tribal members?

Mr. THAYER. The action that we are taking with this bill is one of the last alternatives that the tribe would like to use. In other words, we do not feel we should use the judgment claims. We did report out to the members through the year that this would be taking place: The judgment claims that were to be awarded. There was a minimum of 20 percent that had to be utilized for tribal opera-

tions, and this was reported in our tribal monthly newspaper on several occasions. It has been reported at the general administration meetings.

We have briefed our tribal members thoroughly on the problems that have arisen as a result of inadequate contract support dollars for our tribe.

Senator MELCHER. Have you devised a method to estimate the actual indirect cost recovery so as to be able to seek a more appropriate indirect cost rate in the future?

Mr. THAYER. Yes, sir. We have become pretty well schooled over the last 3 years in problems of indirect cost. We have taken special measures this year to prevent any shortfall, hopefully, next year, but that is not to say that could not happen again. We have made some recommendations to the Office of Inspector General on our rate for next year. That is too technical to get into at this time, but we have made some recommendations that they will, hopefully, allow us to utilize so that we will not incur this deficit again.

In our dialog with the Office of Inspector General out of Denver they indicated that they are willing to look at this alternate proposed method.

Again I would like to reiterate, sir, that I do not know if that is going to prevent the shortfall next year. Unless it is addressed, we could be in the same situation. I do not entirely agree with Mr. Krenzke's statement that we might not get into this again. I think it could happen.

Senator MELCHER. Does the tribe have a resource base to cover these shortfalls?

Mr. THAYER. No, sir. We do not have many resources for the tribe to administer its Federal contracts. Another one of our larger programs within the tribal structure is our education department. In terms of indirect costs for our education programs, that rate has to be negotiated, and oftentimes it falls below the approved rate of OIG. Again, the tribe incurs a deficit.

Senator MELCHER. Would you furnish, for the committee, the recommendations you have made to the Inspector General's Office?

Mr. THAYER. Yes, sir.

Senator MELCHER. I think that might be most helpful. As I said to Mr. Krenzke, this committee would like to cooperate in any way we can with the tribes and with BIA and with other Federal agencies involved to prevent recurrences of these.

Mr. THAYER. As I indicated, we are willing to provide testimony when it is addressed to problems of indirect costs. We really did not know what the monster was here 2 or 3 years ago nor how it would affect the tribe. But, we have learned over the last 3 years how to adjust down from it, and it does provide us with some insight now as to the problem. We are willing to work to alleviate this problem with all tribes if we can at all be of help.

Senator MELCHER. I very much appreciate, and the rest of the committee will very much appreciate your recommendations along this line. We may have to have a general oversight hearing on this subject, because we think it is rather important to prevent these indirect cost rates from adversely affecting tribes.

Mr. THAYER. I understood Mr. Krenzke said they would be looking for technical consultants to address this problem.

Senator MELCHER. They might talk to you. Right?

Mr. THAYER. For a reasonable price we might be able to listen to them.

Senator MELCHER. You have been through the ropes, through the mill. I again want to commend you, Chairman Thayer, and the board and all the members of the band and the tribe for the very forthright, businesslike way you are approaching this. I think it is most commendable and very encouraging to us. It is not something we like to see, that you are stuck with this, having to settle out of judgment funds, but you certainly have presented to us here in Congress a very responsible and a very commendable position on behalf of the band.

Thank you very much.

Mr. THAYER. Thank you, sir.

Senator MELCHER. This completes our hearing this morning on S. 1890.

[Whereupon, at 10:05 a.m., the hearing was adjourned.]

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